

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

STEVES AND SONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:20-cv-00098
)	
JELD-WEN, INC.,)	
)	
Defendant.)	
)	

**DEFENDANT JELD-WEN, INC.’S MOTION TO DISMISS COUNTS ONE AND TWO
OF PLAINTIFF STEVES AND SONS, INC.’S FIRST AMENDED COMPLAINT
FOR FAILURE TO STATE A CLAIM**

Defendant JELD-WEN, Inc. (“JELD-WEN”), by counsel, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves for an order dismissing Counts One and Two of the First Amended Complaint filed by Plaintiff Steves and Sons, Inc. (“Steves”) on April 3, 2020, for failure to state a claim upon which relief may be granted.

As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. Steves does not, and cannot, plausibly allege facts showing antitrust impact or antitrust injury to support its claim in Count One for a violation of Section 7 of the Clayton Act.
2. Steves’ tortious-interference claim in Count Two must be dismissed under Delaware’s “bootstrapping” doctrine.
3. In the alternative, Steves’ tortious-interference claim in Count Two fails as a matter of law because Steves has failed to adequately allege either of the two types of tortious-interference claims recognized by Delaware law.

Therefore, JELD-WEN respectfully requests that the Court issue an order dismissing Counts One and Two of the Complaint with prejudice.

Dated: April 15, 2020

Respectfully submitted,

JELD-WEN, Inc.

By counsel

/s/ Brian C. Riopelle

Brian C. Riopelle (VSB #36454)

Gregory J. DuBoff

McGuireWoods LLP

Gateway Plaza

800 East Canal Street

Richmond, VA 23219

(804) 775-1084 – Tel.

(804) 698-2150 – Fax

briopelle@mcguirewoods.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April 2020, the following counsel of record have been served using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

Lewis F. Powell III
John S. Martin
Alexandra L. Klein
Maya M. Eckstein
Douglas M. Garron
R. Dennis Fairbanks, Jr.
Michael Shebelskie
William H. Wright, Jr.
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
(804) 788-8200 – Tel.
(804) 788-8218 – Fax
lpowell@huntonAK.com
martinj@huntonAK.com
aklein@huntonAK.com
meckstein@huntonAK.com
dgarrou@huntonAK.com
dfairbanks@huntonAK.com
mshebelskie@huntonAK.com
cwright@huntonAK.com

Ted Dane
Glenn Pomerantz
Gregory Sergi
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
(213) 683-9288 – Tel.
(213) 683-4088 – Fax
ted.dane@mto.com
glenn.pomerantz@mto.com
gregory.sergi@mto.com

Kyle Mach
Emily C. Curran-Huberty
Munger, Tolles & Olson LLP

560 Mission Street, 27th Floor
San Francisco, CA 94105
(415) 512-4000 – Tel.
(415) 512-4077 – Fax
kyle.mach@mto.com
emily.curran-huberty@mto.com

Attorneys for Plaintiff

Marvin G. Pipkin
Kortney Kloppe-Orton
Pipkin Law
10001 Reunion Place, Suite 6400
San Antonio, TX 78216
(210) 731-6495 – Tel.
(210) 293-2139 – Fax

Of Counsel

/s/ Brian C. Riopelle
Brian C. Riopelle (VSB #36454)
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219
(804) 775-1084 – Tel.
(804) 698-2150 – Fax
briopelle@mcguirewoods.com

Attorney for Defendant